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Assistance to Somalia in the field of human rights

Report of the Independent Expert, Mr. Mohamed Charfi, on the situation
of human rights in Somalia, submitted in accordance with Commission
resolution 1995/56

Introduction

1. At its fifty-first session, on 3 March 1995, the Commission on Human Rights adopted resolution 1995/56 entitled "Assistance to Somalia in the field of human rights", in which it called upon all parties to the conflict in Somalia to work towards a peaceful solution to the crisis. It requested the independent expert to study ways and means of how best to implement, at the earliest possible date, a programme of advisory services for Somalia, aimed at re-establishing respect for human rights and the rule of law and strengthening the police and the judicial and prison systems in Somalia. It also requested the Secretary-General to report to the Commission at its fifty-second session on the situation of human rights in Somalia and the implementation of its resolution.
2. The present report is submitted pursuant to Commission on Human Rights paragraph 5 of resolution 1995/56.
3. On 31 July 1995, the Secretary-General approved the appointment of Mr. Mohamed Charfi as Independent Expert on Somalia.

4. Against the background of high tension between rival clans, continued violence and banditry, and in the absence of any form of legitimate effective governmental authority with which the United Nations can cooperate in delivering technical assistance in the field of human rights, it has, until recently, been extremely difficult for the Independent Expert to fulfil his mandate as envisioned by the Commission.

Historical background

5. The downfall of President Barre in January 1991 resulted in a power struggle and clashes between clans in many parts of Somalia. This culminated in intense fighting in Mogadishu between two factions, one supporting Ali Mahdi Mohammed and the other General Mohammed Farah Aideed. The hostilities resulted in widespread death and destruction, forcing hundreds of thousands of civilians to flee their homes. Almost 4.5 million people in Somalia were threatened by severe malnutrition, the most affected areas being in the countryside. It is estimated that 300,000 people have died since November 1991, while 1.5 million lives were at immediate risk.

6. This was followed by political chaos, a deteriorating security situation, widespread banditry and looting, attacks against United Nations troops and serious violations of human rights. By March 1991, the United Nations, through its humanitarian efforts, was fully engaged in Somalia although the volatile security situation would compel the United Nations on several occasions to withdraw its personnel temporarily from Somalia. It was not until the end of 1991 that the United Nations would engage in an initiative in an attempt to restore peace in Somalia.

7. Despite Mr. Mohammed Sahnoun's appointment as Special Representative for Somalia on 1 May 1992 and the efforts he made, the situation continued to deteriorate as Somalia remained without a central Government and Mogadishu was divided between rival militias. Several of the Somali de facto authorities refused to agree to the deployment of United Nations troops to secure the delivery of aid.

8. Accordingly, the Security Council in resolution 794 (1992) of 3 December 1992, endorsed action under Chapter VII of the Charter of the United Nations, in order to establish a secure environment for humanitarian relief operations. In accordance with this resolution, the Unified Task Force (UNITAF), spearheaded by the United States, was deployed in Mogadishu in December 1992.

9. In resolution 814 (1993) of 26 March 1993 the Security Council expanded the size and mandate of the United Nations Operation in Somalia (UNOSOM II), and requested the Secretary-General, through his Special Representative and with assistance from all relevant United Nations entities, offices and specialized agencies, to provide humanitarian and other assistance to the people of Somalia in rehabilitating their political institutions and economy and promoting political settlement and national reconciliation.

10. The most crucial task that fell to UNOSOM II was the disarmament of all Somali factions and armed groups that terrorized the people and obstructed humanitarian activities. The priority that UNOSOM II gave to disarmament

generated hostility amongst some clan leaders who resorted to violence in order to frustrate United Nations efforts to bring relief, peace and development to Somalia. Many UNOSOM troops were killed or seriously wounded in a series of ambushes.

11. In response to this situation, the Security Council in resolution 837 (1993) of 6 June 1993 condemned these attacks and reaffirmed the Secretary-General's authority to take all necessary measures against those responsible for publicly inciting them, including their arrest and detention for prosecution. This prompted the United States Government to announce the withdrawal of American troops from Somalia by 31 March 1994.

12. Nevertheless, the security situation in the country was showing signs of improvement, with humanitarian aid reaching its destinations and some indications of political progress. On 4 November 1994, in resolution 954 (1994) of 4 November 1994 the Security Council decided to extend the mandate of UNOSOM II for a final period until March 1995.

Situation since March 1995

13. The phase-out of UNOSOM II from Somalia began in November 1994, and was completed by 2 March 1995. The peaceful and efficient withdrawal of some 15,000 troops then deployed in the country was supported by the Combined Task Forces "United Shield" which had arrived in Mogadishu on 28 February 1995.

14. It was the continued lack of progress in the peace process and in national reconciliation, in particular the lack of sufficient cooperation from the Somali parties over security issues, which undermined the United Nations objectives in Somalia and prevented the continuation of the mandate of UNOSOM II beyond March 1995.

15. The absence of an accountable Government and the lack of infrastructure in the country, combined with a continued situation of anarchy, made the capture and bringing to justice of the perpetrators of gross human rights violations an impossible task.

16. Following the withdrawal of UNOSOM II troops, leaders of 12 Somali factions announced in Nairobi a National Reconciliation Conference in August, while in September, the Organization of the Islamic Conference (OIC) organized talks in Addis Ababa with a number of rival groups. General Aideed issued a decree on 16 August in which he promised to confiscate weapons, and declared his goal to ensure free and fair elections within three years. These initiatives are evidence of a cautious move away from the emergency phase towards one of recovery and reconstruction. Nevertheless, the situation is still far short of security and peace, and the potential for a return to full-scale civil war remains a serious threat.

Assessment of the current situation

17. The current situation regarding human rights violations is as follows:

(a) As regards criminal procedure, a number of Shari'a Islamic courts are being set up across the country. Shari'a law is noted as the dominant

system of law, particularly in southern Somalia. It is notable, however, that Shari'a courts do not exist in territories under the control of General Aideed;

(b) As regards extrajudicial killings and arbitrary executions, hundreds of unarmed civilians, including women and children, have been deliberately killed during periods of fighting between opposing clan factions by members of armed political groups on account of their membership of a particular clan. There is also frequent, indiscriminate use of heavy weapons, resulting in heavy civilian casualties. Extrajudicial executions are widely reported to be used as a political tool to remove particular opposition leaders. Of grave concern is the apparently deliberate targeting of those clan elders involved in moves towards reconciliation. It has been impossible for international observers to investigate many of the reported incidents due to the worsening security situation;

(c) As regards the treatment of minorities, it is noted that most of the violence in Somalia is clan based. As a result, ethnic background and clan identity are of greatest significance, and access to justice and resources depends very much on the relative power of the clan or faction;

(d) As regards forced displacements and refugees, it is estimated that there are some 150,000 refugees in camps in Kenya, over 300,000 refugees still in Ethiopia and Djibouti, and a further 350,000 persons internally displaced within Somalia. There have been reports of forced displacements as victorious clans burn the homes of conquered villages, although more often people leave their homes voluntarily for fear of more serious human rights violations. There are some 109 camps for internally displaced people in Mogadishu with a total population of 54,680 people. The inhabitants of at least two of these camps are being held captive by extortionist militia groups who deny access to and from the camps without the payment of "protection" money;

(e) As regards violations of human rights affecting international aid workers, there have been several incidents in which United Nations or non-governmental organization international personnel have been mistreated, harassed, abducted and threatened by militia allied to Somali faction leaders;

(f) As regards violence against women, a persistent feature of the inter-clan conflict has been the rape and sexual abuse of women, particularly the displaced, by members of militia, or moryan bandit raiders. Another recurring feature of violence is the forced marriage of young girls to members of the opposing militia. Sexual abuse is a major concern underlying Somali women's support for Shari'a law, which places heavy penalties for rape;

(g) As regards human rights violations committed by United Nations troops, cases of such violations are currently under investigation by three national contingents: Canada, Belgium and Germany. In Canada, a soldier has been sentenced to a term of prison for manslaughter. Since January 1994, UNOSOM have not held any Somalis in custody.

(h) As regards access to a fair and public trial, there has been minimal progress towards the re-establishment of a system of independent justice in Somalia. In the north-west region, in the "Republic of Somaliland"

led by President Egal, there is a legal system based on the 1962 Penal Code, including a Supreme Court. However, there is no current information on the ability to receive a fair trial

Somali political movements

18. The Hawiye clan's United Somali Congress (USC), which controls much of southern and central Somalia, is split into two factions, the Somali National Alliance (SNA) and the Somali Salvation Alliance (SSA). The capital, Mogadishu, is divided between the Abgal clan led by Ali Mahdi Mohammed's SSA in control of the north, and the Hebr Gadir clan led by General Aideed's SNA entrenched in the south. In Baidoa, the Rahanweyne clan is dominant, although the town fell to General Aideed's forces early in September. In the extreme south, where Darod clans are strong, the Gedo region is under the control of Omer Haji, leader of the Somali National Front (SNF) and General Morgan, leader of the Somali People's Movement (SPM), controls Kismayo. President Mohammed Egal is dominant in the breakaway "Republic of Somaliland", in the north-west. Neither the Addis Ababa meeting nor the Nairobi talks have led to a significant political change in Somalia.

Mandate of the Independent Expert

19. The Commission on Human Rights in resolution 1995/56 indicated that the mandate of the independent expert is, inter alia, "to study ways and means of how best to implement, at the earliest possible date, a programme of advisory services for Somalia, upon request, inter alia through the contributions of agencies and programmes of the United Nations currently in the field, aimed at re-establishing respect for human rights and the rule of law and strengthening the police and the judicial and prison systems in Somalia, in a manner consistent with internationally accepted criminal justice standards".

20. The Commission, the Economic and Social Council, as well as the General Assembly and the Security Council, have repeatedly called upon all the Somali parties concerned to terminate hostilities and to engage in a national reconciliation process that would allow for the transition from relief to reconstruction and development, and have appealed to the parties to respect fully the security and safety of personnel of the United Nations and its specialized agencies and of non-governmental organizations. These calls seem not to have yet been heeded.

Conclusion and recommendations

21. Under the circumstances, the Independent Expert, who travelled to Somalia from 25 February to 10 March 1996, will submit an updated report to the Commission at its fifty-third session. The United Nations should continue to monitor human rights violations that are occurring in Somalia, to draw the attention of the international community to the continued need for action, and to formulate proposals on possible remedies to the situation.
